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2 **Lori A. Terry, WSBA #22006**
3 **Foster Pepper PLLC**
4 491 West Riverside Avenue, Suite 1310
5 Spokane, Washington 99201
6 Telephone: (509) 777-1604
7 Facsimile No.: (866) 749-9343
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Hon. Fred L. Van Sickle

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 COMMUNITY ASSOCIATION FOR
11 RESTORATION OF THE
12 ENVIRONMENT,

No. CV-08-3028-FVS

13 Plaintiff,

**STIPULATED PROTECTIVE
ORDER**

14 v.

15 DERUYTER BROTHERS DAIRY,
16 INC.,

17 Defendant.

18
19 Plaintiff, Community Association for Restoration of the Environment
20 ("Plaintiff") and Defendant, DeRuyter Brothers Dairy, Inc. ("Defendant"), by and
21 through their attorneys, hereby stipulate and move the Court for entry of this
22 Protective Order, which shall govern the use, dissemination, and disclosure of
23 certain documents and materials described herein and obtained by the parties
24 through discovery in Case No. CV-08-3028-FVS currently pending between the
25 parties. The parties agree as follows:

26
27 STIPULATED PROTECTIVE ORDER - 1
28 Case No. CV-08-3028-FVS

FOSTER PEPPER PLLC
422 WEST RIVERSIDE AVE., SUITE 1310
SPOKANE, WASHINGTON 99201-0302
Phone (509) 777-1604 Fax (866) 749-9343

1 **A. Scope of Order**

2 This Protective Order shall apply to all information, premises, documents,
3 and things owned or controlled by the parties, or of any parents, subsidiaries,
4 divisions, branches, affiliates, related companies, or licensees of any party, or of
5 any other parties added or substituted in this case, that are subject to discovery in
6 this action, including without limitation, testimony adduced at discovery and trial,
7 depositions upon oral examination or upon written questions, answers to
8 interrogatories, documents and things produced, information obtained from
9 inspection of premises or things, and answers to requests for admission (hereafter
10 "Information and Materials").

11 **B. Definitions**

12 As used in this Order, "Confidential" Information and Materials shall
13 include all Information and Materials that have not been made public, the
14 disclosure of which the disclosing party contends could cause harm to its business
15 operations or provide improper advantage to others. "Confidential" Information
16 and Materials shall include, but shall not be limited to, trade secrets within the
17 meaning of the Uniform Trade Secrets Act and information that concerns or
18 relates to (1) sales, marketing, manufacturing, or research and development, (2)
19 financial performance, (3) manufacturing or other costs of doing business, (4)
20 licenses or other confidential agreements, and/or (5) technical details of products
21 or methods of doing business and Confidential Business Information (CBI) under
22 the federal Clean Water Act (33 USC § 1318(b)(2)), RCW 43.21A.160, and
23 applicable federal and state regulations.

24 **C. Marking Requirements**

25 1. All Information and Materials deemed "Confidential" will be so
26 identified and labeled by the producing party.

1 2. If qualified Information and Materials cannot be labeled, they shall
2 be designated as "Confidential" in a manner to be agreed upon by the parties.

3 3. In lieu of marking the original of a document or thing, if the original
4 is not produced, the designating party may mark the copies that are produced or
5 exchanged, but the other party, by its counsel, shall have the right to examine the
6 original, to be provided with a full and complete copy thereof, and to call for
7 production of the original at the trial in this action. Nothing in this Stipulated
8 Protective Order, however, requires the production of privileged or work-product
9 Information and Materials, or any Information and Materials that are otherwise
10 not subject to discovery.

11 4. The identification and labeling specified in Paragraphs C.1, C.2, and
12 C.3 of this Order shall be made at the time when the answer to the interrogatory or
13 the answer to the request for admission is served, and when a copy of the
14 document or thing is provided to Plaintiff or Defendant. In the case of hearing
15 and deposition transcript pages, the designating party shall advise opposing
16 counsel of the specific pages to be maintained in confidence within thirty (30)
17 days after the receipt of the transcript. During such thirty (30) day period, the
18 entire transcript shall be deemed "Confidential."

19 5. If a disclosing party discovers a failure to mark qualified Information
20 or Materials as "Confidential," the other party shall be notified immediately and,
21 to the extent practicable, the following corrective action shall be taken:

22 (a) The receiving party shall notify all persons who have received
23 the Information and Materials that the Information and Materials are
24 designated "Confidential" and must be treated as designated in this Order;

(b) The receiving party shall take all reasonable steps to place the applicable "Confidential" label on the designated Information and/or Materials; and

(c) The receiving party shall treat the newly marked Information and Materials as set out in Paragraphs F and G of this Order.

D. Designating Information and Documents

1. In designating Information and Materials as "Confidential," a party will make such designation only as to that information that it in good faith believes to be "Confidential" as defined in Paragraph B of this Order.

2. If counsel for a party believes that questions put to a witness being examined during a deposition will disclose "Confidential" Information and/or Materials of his or her client, or that the answer to any question or questions requires such disclosure, or if documents to be used as exhibits during the examination contain such information, such counsel shall so notify opposing counsel and the deposition of such witness, or portions thereof, shall be taken only in the presence of appropriate persons as defined in Paragraph F hereof, counsel for the witness, if any, the stenographic reporter, and the owners, officers or employees of the party whose "Confidential" information is being disclosed.

E. Redaction

Redacted versions of “Confidential” materials that no longer contain any “Confidential” information, and that are not subject to this Order, may be used for any proper purpose.

F. Access to “Confidential” Information and Materials

1. It is the general intent of the parties to limit disclosure to the smallest number of persons, consistent with the needs of litigation.

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Case No. CV-08-3028-FVS

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1 2. All access, possession, use, testing, inspection, review or copying of
 2 any Information or Materials designated as "Confidential" under this Order is
 3 governed by this Order and is limited to the following persons ("Qualified
 4 Persons"):

5 (a) The law firm of Foster Pepper PLLC; the law firm of Eymann
 6 Allison Hunter Jones, P.S.; and the Western Environmental Law Center,
 7 including attorneys, law clerks, stenographic, clerical, and paralegal
 8 employees of these firms.

9 (b) Independent experts or consultants for each party and their
 10 clerical personnel, who are not employees of the parties or their parents,
 11 subsidiaries, divisions, branches, affiliates, or competitors, (other than
 12 specifically for this action), and whose advice and consultation will be used
 13 by such party in connection with preparation for trial of this case.
 14 However, disclosures to such persons will be allowed only after the
 15 conditions set forth in Paragraph F.3 of this Order are satisfied.

16 (c) United States District Court, Eastern District of Washington,
 17 Judges and personnel employed by the United States District Court, Eastern
 18 District of Washington.

19 (d) Clients, to the extent that counsel believes they have an ethical
 20 duty to divulge such information for the purpose of giving advice or
 21 counsel. Prior to the disclosure of any "Confidential" Information and/or
 22 Materials to a client, disclosing counsel shall first obtain from each such
 23 client a copy of a signed undertaking as set forth in Exhibit B, including any
 24 information requested by Exhibit B.

25 3. Prior to any disclosure of "Confidential" Information and/or
 26 Materials to those parties named in Paragraph F.2.b. of this Order, counsel

1 desiring to disclose "Confidential" Information and/or Materials of the opposing
 2 party ("disclosing counsel") to any person shall obtain from each such person a
 3 copy of a signed undertaking as set forth in Exhibit A, including any information
 4 requested by Exhibit A.

5. Prior to the disclosure of "Confidential" Information and/or Materials
 6 to an owner, officer or employee of any party, disclosing counsel shall first obtain
 7 from each such person a copy of a signed undertaking as set forth in Exhibit B,
 8 including any information requested by Exhibit B.

5. The parties will attempt to resolve any disagreements about the
 10 designation of information and/or materials as "Confidential" on an informal basis
 11 before presenting the dispute to the Court by motion or otherwise. If unable to
 12 resolve any such disagreements, the objecting party shall file an appropriate
 13 motion with the Court. Information and/or Materials designated as "Confidential"
 14 shall remain under the protection of this Stipulated Protective Order until there is
 15 an order of the Court to the contrary or until there is an express written agreement
 16 between the parties. No party shall be obliged to challenge the propriety of a
 17 "Confidential" designation at the time of production, and failure to do so shall not
 18 preclude a subsequent attack on the propriety of such designation. In any motion
 19 for designation of "Confidentiality", it shall be the burden of the party seeking
 20 such designation to establish good cause for its need for "Confidentiality." The
 21 moving party must support its motion with a clear showing of a particular and
 22 specific need for the Confidentiality Order, supported by specific examples of
 23 harm that would be suffered because of the disclosure of information.

G. Handling "Confidential" Information and Materials

1. Copies of "Confidential" Information and Materials shall not be
 25 made public by the party to whom they are disclosed unless they become a part of
 26

1 the public record in this action by agreement of the parties or by order or action of
2 the Court. "Confidential" Information and Materials may be included in whole or
3 in part in pleadings, motions, or briefs only if such Information and Materials
4 shall be filed with the Court in sealed envelopes prominently marked with the
5 caption of this proceeding and the appropriate notation:

6 **Contains CONFIDENTIAL Information –**

7 **To Be Opened Only As Directed By the United States District Court, Eastern
9 District of Washington**

10 2. Any Information and Materials marked with this or a similar legend
11 may be filed with the Court in a single envelope. The parties stipulate that
12 Information and Materials identified and labeled in accordance with this
13 Paragraph shall be received in camera as directed by the Court.

14 3. Within sixty (60) days after the final judgment and the exhaustion of
15 any appeals in this action or the settlement of this action, all Information and
16 Materials covered by this Order, except those in possession of the Court, shall be
17 returned or destroyed, except that counsel may maintain one copy of all
18 correspondence, pleadings, and other documents. Subject to this exception,
19 counsel shall certify to counsel for the producing party the return or destruction of
20 all additional copies of Information and Materials so designated in their
21 possession, custody, or control. To the extent that any Information or Materials
22 have been filed under seal with the Court, such Information and Materials shall be
23 retrieved by the party seeking to maintain the confidentiality of such Information
24 or Materials.

25 **H. Miscellaneous**

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STIPULATED PROTECTIVE ORDER - 7
Case No. CV-08-3028-FVS

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SPOKANE, WASHINGTON 99201-0302
Phone (509) 777-1604 Fax (866) 749-9343

1 1. This Order shall not prevent a party from applying to the Court for
2 relief from the Order or any part thereof, or for relief from its application in any
3 particular circumstance, or from applying to the Court for further or additional
4 protective agreements or orders, or from agreeing among themselves to
5 modification of this Order.

6 2. This Order shall survive the final termination of this or related
7 proceedings to the extent that the "Confidential" Information and Materials have
8 not or do not become known to the public.

9 3. No copy of any transcript of any deposition taken by any party that is
10 designated in part or in whole as "Confidential" shall be furnished by the reporter
11 to any person other than to counsel for the parties. Neither the original nor any
12 copy of any transcript of any deposition taken in this proceeding shall be filed
13 with the Court or used during the trial in this action until the parties' counsel have
14 designated those portions, if any, of the transcript that are to be regarded as
15 "Confidential." Upon such a designation, the designated portions of the transcript
16 to be filed with the Court or used during the trial shall be filed under seal in
17 accordance with Paragraph G of this Order, unless otherwise agreed by the parties
18 or ordered by the Court.

19 4. Each person having access to "Confidential" Information and
20 Materials under this Order shall take all reasonable steps to comply with this
21 Order.

22 5. Nothing in this Order shall bar or otherwise restrict any attorney
23 herein from rendering advice to his or her client with respect to this proceeding
24 and, in the course thereof, referring to or relying upon his or her examination of
25 "Confidential" Information and Materials; provided, that in rendering such advice
26 and in otherwise communicating with clients, except as otherwise provided in

STIPULATED PROTECTIVE ORDER - 8
Case No. CV-08-3028-FVS

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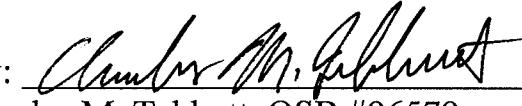
1 Paragraph F.2.d, the attorney shall not make specific disclosure to any person of
2 any "Confidential" Information and Materials.

3 6. Any person bound by this Order may rely on a waiver or consent that
4 is made by an attorney for a party as if that waiver or consent was made by that
5 party or person, provided that such waiver or consent shall be either in writing or
6 on record in a hearing, trial, or deposition transcript.

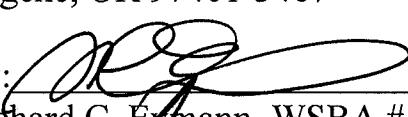
7 7. In the event any non-party is called upon to produce Information
8 and/or Materials that it reasonably believes constitute or disclose trade secrets,
9 commercial information or other information that it is entitled to maintain in
10 confidence, such non-party may elect to become party to the terms of this
11 Protective Order by serving a notice of its election on counsel for each party.
12 After service of notice of election, this Protective Order shall be binding on and
13 inure to the benefit of such non-party.

14 The parties, through their undersigned counsel, agree to the terms of this
15 Stipulated Protective Order as of the last date shown below.

16 COMMUNITY ASSOCIATION FOR
17 RESTORATION OF THE ENVIRONMENT

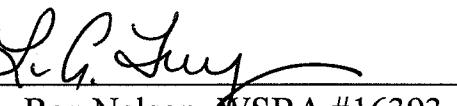
18 By: 
19 Charles M. Tebbutt, OSB #96579
20 Western Environmental Law Center
21 1216 Lincoln Street
22 Eugene, OR 97401-3467

23 Date: 3/2/09

24 By: 
25 Richard C. Eymann, WSBA # 7470
26 Eymann Allison Hunter Jones, P.S.
208 West 2nd Avenue
Spokane, WA 99201

27 Date: 3/23/09

1 DERUYTER BROTHERS DAIRY, INC.
2

3 By: 

4 Date: 3/2/09

5 John Ray Nelson, WSBA #16393
6 Lori A. Terry, WSBA #22006
7 Foster Pepper PLLC
8 422 W. Riverside Avenue, Suite 1310
9 Spokane, WA 99201

10 **IT IS SO ORDERED.**

11 **Dated this 1st Day of April, 2009.**

12 *s/Fred Van Sickel*
13 **United States District Judge**

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STIPULATED PROTECTIVE ORDER - 10
Case No. CV-08-3028-FVS

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1 EXHIBIT A

2 Hon. Fred L. Van Sickle

3 **John R. Nelson, WSBA #16393**

4 **Lori A. Terry, WSBA #22006**

5 **Foster Pepper PLLC**

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7 Spokane, Washington 99201

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9 Facsimile No.: (866) 749-9343

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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON

14 COMMUNITY ASSOCIATION FOR
15 RESTORATION OF THE
16 ENVIRONMENT,

17 No. CV-08-3028-FVS

18 Plaintiff,

19 v.
20 **STIPULATED PROTECTIVE
21 ORDER**

22 DERUYTER BROTHERS DAIRY,
23 INC.,

24 Defendant.

25 **UNDERTAKING OF _____**

26 **STATE OF _____**

COUNTY OF _____

27 I, _____, being duly sworn, state
28 that:

29 1. My address is: _____

30 **STIPULATED PROTECTIVE ORDER - 1**
31 Case No. CV-08-3028-FVS

32 **FOSTER PEPPER PLLC**
33 422 WEST RIVERSIDE AVE., SUITE 1310
34 SPOKANE, WASHINGTON 99201-0302
35 Phone (509) 777-1604 Fax (866) 749-9343

1
2. My employer is: _____

3
3. My present occupation or job description is: _____

4
4. I have/have never been employed and am/am not currently employed
5 by any of the parties in this case, or by any parents, subsidiaries, divisions,
6 branches, affiliates, or competitors of any of the parties.

7
5. I have received a copy of the Stipulated Protective Order in this case.

8
6. I have carefully read and understand the provisions of the Stipulated
9 Protective Order.

10
7. I will comply with all of the provisions of the Stipulated Protective
11 Order and understand that a violation of the Stipulated Protective Order or this
12 Undertaking could result in sanctions against me.

13
8. I will hold in confidence and not disclose to anyone not qualified
14 under the Stipulated Protective Order any "Confidential" Information or Materials
15 disclosed to me.

16
9. I will return all Information and Materials containing or disclosing
17 "Confidential" Information and Materials which come into my possession, and
18 Information and Materials that I have prepared relating thereto, to counsel for the
party that provided me with the "Confidential" Information and Materials.

19
10. I hereby submit to the jurisdiction of this Court for the purpose of
20 enforcement of the Stipulated Protective Order in this case.

21
I declare under penalty of perjury that the foregoing is true and correct.

22
Dated: _____ By: _____

23
24
25
26
STIPULATED PROTECTIVE ORDER - 2
Case No. CV-08-3028-FVS

FOSTER PEPPER PLLC
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1 EXHIBIT B

2 Hon. Fred L. Van Sickle

3 **John R. Nelson, WSBA #16393**

4 **Lori A. Terry, WSBA #22006**

5 **Foster Pepper PLLC**

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7 Spokane, Washington 99201

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11 terrl@foster.com

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON

14 COMMUNITY ASSOCIATION FOR
15 RESTORATION OF THE
16 ENVIRONMENT,

17 No. CV-08-3028-FVS

18 Plaintiff,

19 v.
20 **STIPULATED PROTECTIVE
21 ORDER**

22 DERUYTER BROTHERS DAIRY,
23 INC.,

24 Defendant.

25 **UNDERTAKING OF _____**

26 **STATE OF _____**

COUNTY OF _____

I, _____, being duly sworn, state
27 that:

28 **STIPULATED PROTECTIVE ORDER - 1**
29 Case No. CV-08-3028-FVS

30 **FOSTER PEPPER PLLC**
31 422 WEST RIVERSIDE AVE., SUITE 1310
32 SPOKANE, WASHINGTON 99201-0302
33 Phone (509) 777-1604 Fax (866) 749-9343

1. My address is: _____

2. My employer is: _____

3. My present occupation or job description is: _____

4. I have received a copy of the Stipulated Protective Order in this case.

5. I have carefully read and understand the provisions of the Stipulated Protective Order.

6. I will comply with all of the provisions of the Stipulated Protective Order and understand that a violation of the Stipulated Protective Order or this Undertaking could result in sanctions against me.

7. I will hold in confidence and not disclose to anyone not qualified under the Stipulated Protective Order any "Confidential" Information or Materials disclosed to me.

8. I will return all Information and Materials containing or disclosing "Confidential" Information and Materials which come into my possession, and Information and Materials that I have prepared relating thereto, to counsel for the party that provided me with the "Confidential" Information and Materials.

9. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Stipulated Protective Order in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____ By: _____